IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE EIGHTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

and
THE HON'BLE MR JUSTICE Ch.S.R.K. PRASAD

WRIT PETITION No: 19117 of 2004

Between:

J. Narayana, S/o.Nallappa,
K.K.Agraharam, B.K.Samudaram Mandal, Anantapur Dist.

..... PETITIONER

AND

1 The Collector & Dist. Magistrate, Anantapur.
2 The Prl.Secretary for Home, Secretariat, Hyderabad.
3 The Suptd., Central Prison, Cherlapalli Ranga Reddy Dist.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ of Habeas Corpus directing the respondents to produce Talari sivaiah S/o.Naga Muni now detained in Central Prison, Cherlapalli before this Hon'ble court and may be ordered to release forthwith declaring that his detention is illegal and void.

Counsel for the Petitioner: MR.T.PRADYUMNA KUMAR REDDY

Counsel for the Respondents: THE ADVOCATE GENERAL

The Court made the following:

ORDER: (BY GB,J)

This Writ Petition is filed seeking a Writ of Habeas Corpus with a direction to the respondents to produce Talari Sivaiah, S/o. Naga Muni now detained in Central Prison, Cherlapalli and he may be ordered to release forthwith declaring that his detention is illegal and void.

2. The detenu was detained by virtue of the order passed by the learned Collector and District Magistrate, Anantapur, in proceedings No.5001-5/MC/2004 dated 19-9-2004. In support of the order of detention, the following grounds were mentioned:

> "1. Cr.No.61/99 u/s 324, 307, 109 r/w 34 IPC of B.K. Samudaram PS:- On 26-9-1999 at about 10-30 p.m. you along with 3 hired assassins namely Boya Pothulaiah, Boya Subbarayuddu of Matyavantham (v) and Vadde Sreenivasulu of Bathalapalli (V) with hunting stickles hacked one Kanuma Kullayappa S/o. Pedda Papanna, aged 50 yrs of K.K. Agraharam (v) while he was sleeping on a cot in front of his house at K.K. Agraharam (v) and due to the interference of the members of the family, the victim Kullayappa is survived with injuries. On the complainant of the victim Kullayappa this case was registered u/s 324, 307, 109 r/w 34 IPC. You and your followers were arrested and sent for remand.
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> As there is a faction in K.K. Agraharam (v) between M.C. Venkata Reddy and Sreenath Gowd in K.K. Agraharam (v) cases and counter cases are reported. Secutiry action u/s 107 Cr.P.C. was initiated against two grounds. In Cr.No.59/04 u/s. 107 Cr.P.C. M.C. Venkat Reddy and 10 others were booked as A-Party and their rivals M. Sreenath Gowd and 10 others are booked as B-Party. The above 11 respondents of A-Party are the associates of you and you took active rule in the group of M.C. Venkata Reddy and became staunch follower of M.C. Venkat Reddy. You are formed as designer and planner for the criminal acts. You are also an expert in executing your plan perfectly.
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> 2. Cr.No.76/04 r/w 147, 148, 324, 307, 382 r/w 149 IPC and Sec.3 & 5 of ES Act of B.K. Samudaram PS: On 20-5-2004 between 2-30 and 3-30 p.m. you under the leadership of Mukkamala Chinna Venkata Reddy, Nagaraju along with 17 others formed yourselves into an unlawful assembly armed with sticks, sickles and county made bombs attacked the deceased Pulla Sivaiah, S/o. Pedda Katamaiah, age 28 yrs of K.K. Agraharam (v) while he was chit chatting at rachabanda and inflicted multiple injuries and caused his

instantaneous death. In this offence you have played an important role in designing and execution of the offence for two attacks on the deceased and hurling bombs in front of the house of rival leader. This offence was continuous for more than 1 hour in the village under the able guidance and instigation of you.

On the complainant of Pulla Laxmidevi W/o. Sivaiah (deceased) this case was registered. You are arrested along with your followers and sent for remand.

3. Cr.No.103/04 u/s 447, 427 IPC of B.K. Samudaram PS: On 24-7-2004 at 4 a.m. you along with your followers about 20 persons formed yourselves into an unlawful assembly armed with hunting sickles and axes. Criminally trespassed into the garden of the complainant Mekala Sreenath Gowd, S/o. Balappa age 38 years of K.K. Agraharam (v) and cut 550 citrus trees and damaged 1 acre chille garden and incurred loss of Rupees about 2 lakhs. You are A1 in this case. On the complainant of M. Sreenath Gowd this case is registered. On 31-7-2004 you and your staunch followers arrested and sent for remand.

It is thus evident that you are a habitual criminal and dangerous and desperate person and you are so hardened and became incorrigible that the ordinary provisions of penal code will not have deterrent effect over your violent acts and you are likely to repeat such violent acts in future and as such you have to be kept under control."

3. The said grounds are attached on the premise that they are not sustainable in law so as to invoke the provisions contained in A.P. Prevention Dangerous Activities of Bootleggers, Dacoits, Drug Offenders Goondas, Immoral Traffic Offenders and Land Grabbers Act, (Act 1 of 1986).

4. The learned Senior Counsel appearing for the detenu submits that the first ground viz., Crime No.61 of 1999 u/s. 324, 307, 109 r/w 34 IPC of B.K. Samudaram PS, dated 26-09-1999 was alleged to have been committed by the detenu in 1999. Thereafter, the next ground referred to was alleged to have been committed in 2004. Thus, there is a gap of 5 years and under those circumstances the learned Counsel would submit that there is no proximity or continuity so as to assess the propensity of the accused. He relies on the judgment of the Full Bench in

S. JAYAMMA v COLLECTOR AND DISTRICT MAGISTRATE, CUDDAPAH &

ANOTHER wherein it was held that though there is no specific provision for taking into consideration the past events by the detaining authority, it was held that such events should have close and continuous link and proximity so as to provide rational nexus between the incident relied on and the satisfaction arrived at.

5. Taking the assistance from the judgment of the Full Bench, the learned counsel would submit that the order of detention is liable to be set aside. He also attached several grounds on the premise that they do not give cause of action for issuing detention order as the acts alleged to have been committed by the detenu to be contained within the existing provisions and it need not be resorted to under the preventive detention provisions.

6. The learned Advocate General however, submits that the three incidents are very serious incidents and therefore, the order of the Collector cannot be said to be illegal and invalid.

7. As can be seen from ground No.1, it relates to Cr.No.61/99 alleged to have been committed by the detenu on 28-9-1999. In the next ground, alleged illegal act is on 20-5-2004. Thus, we find 5 years gap between the first act covered by ground No.1 and the second act covered by ground No.2. In such circumstances, the Full Bench of this Court observed as under:

> "13. The issue required to be adjudicated is whether the reference in the detention orders regarding the past conduct of the detenu for the purpose of arriving the propensity of criminal acts of the detenu would vitiate the detention order. The Judgments are clear on this aspect, which are referred to above. The relevancy and proximity of time are *sine qua non* for successfully sustaining the order of detention. No hard and fast rule can be fixed and each case has to be decided on its own merits. The Supreme Court considered gap of sixteen months between the offending acts and the detention order and set aside the order of detention holding that the order of detention was based on stale incidents. Therefore, the proximity in time should provide a rational nexus between the incident relied on and the satisfaction arrived at. While there is no prohibition to consider the past events, at the same time, there should be continuous link of events coupled with proximity of time. Under these circumstances only the order of detention would be immune from attack. Accordingly, we answer the reference as follows:

> While there is no specific bar for the detaining authority to refer to the past events, but at the same time such events should have a close and continuous link and proximity so as to provide a rational nexus between the incidents relied on and the satisfaction arrived at."

8. The detention order falls within the parameters of the judgment referred to above and we find that such stale grounds cannot be taken into consideration. Under those circumstances, we hold that the detention order is not sustainable in law and accordingly is liable to be set aside.

9. In the result, the Writ Petition is allowed and the impugned order of detention passed by the 1st respondent is hereby quashed. The detenu shall be set at liberty forthwith, if not required in any other crime.

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08-11-2004

ES

That Rule Nisi is made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this **Monday the Eighth day of November Two thousand and Four.**

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ASSISTANT REGISTRAR

To

1 The Collector & Dist. Magistrate, Anantapur.

2 The Principal Secretary for Home, Secretariat, Hyderabad.
3 The Superintendent, Central Prison, Cherlapalli Ranga Reddy Dist.

4. 2 CCs to the Advocate General, High Court Buildings, Hyderabad (OUT).

5. 2 CD copies.